

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1234

Introduced by Senators De León and Steinberg

(Principal coauthor: Assembly Member Furutani)

(Coauthors: Assembly Members Allen, Blumenfield, and Solorio)

February 23, 2012

An act to add Section 20139 to, and to add Title 21 (commencing with Section 100000) to, the Government Code, *and to add Section 1088.9 to the Unemployment Insurance Code*, relating to ~~pensions~~ *retirement savings plans*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, as amended, De León. ~~Pensions~~. *Retirement savings plans*.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would ~~establish~~ *enact* the ~~Golden State California Secure Choice Retirement Savings Trust Act~~, which would create the ~~Golden State California Secure Choice Retirement Savings Trust~~ that would ~~to be administered by the Golden State California Secure Choice Retirement Savings Investment Board~~, which would also be established by the bill. The bill would require eligible employers, as defined, ~~and would authorize other employers to enroll eligible employees, as defined, into an employer-sponsored retirement plan or pension plan, as specified, offered by the trust, or a personal pension in the case of a nonparticipating employer, to offer a payroll deposit retirement savings arrangement so that eligible employees, as defined, could contribute a portion of their salary or wages to a retirement savings plan account in the California Secure Choice Retirement Savings Plan~~, as specified.

*The bill would require eligible employees to participate in the plan, unless the employee opts out of the plan, as specified. The bill would require a specified percentage of the annual salary or wages of an eligible employee participating in the ~~retirement or pension~~ plan to be deposited in the ~~Golden State~~ California Secure Choice Retirement Savings Trust, which would be segregated into a program fund and an administrative fund, both of which would be continuously appropriated to the board for purposes of the act. The bill would limit expenditures from the administrative fund, as specified. *The bill would also require the board to establish a Gain and Loss Reserve Account within the program fund.**

The bill would require the Employment Development Department to ~~modify the California Employee's Withholding Allowance Certificate~~ create an exemption certificate to create an option for employees to elect to opt out of ~~an employer-sponsored retirement or pension~~ the plan. The bill would, commencing January 1, 2014, require the Employment Development Department to assess a penalty on any eligible employer that fails to ~~offer its eligible employees a retirement or pension plan option~~ make the plan available to eligible employees, as specified. The bill also ~~makes~~ would make a statement of legislative findings.

The bill would provide that the operational provisions of the ~~Golden State~~ California Secure Choice Retirement Savings Trust Act shall be operative only if sufficient funds are made available through a nonprofit or private entity or federal funding, as specified, to allow the board to study, develop, and obtain the approvals necessary to implement the program and the board determines that the program can be self-sustaining.

Existing law establishes the Board of Administration of the Public Employees' Retirement System and vests the board with various powers and duties.

This bill would authorize ~~the~~ that board to administer funds in the ~~Golden State~~ California Secure Choice Retirement Savings Trust, as specified.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

1 (a) California workers without access to an employer-sponsored
2 retirement plan need a seamless, lifelong savings system, providing
3 them with the opportunity to build their assets and helping them
4 to attain their future financial stability through a secure, portable
5 ~~pension~~ retirement savings plan.

6 (b) *According to recent data by the University of California,*
7 *Berkeley, Center for Labor Research and Education, middle class*
8 *families in California are at significant risk of not having enough*
9 *retirement income to meet even basic expenses, as nearly 50*
10 *percent of middle-income California workers will retire at or near*
11 *poverty.*

12 (c) *The lack of sufficient retirement savings poses a significant*
13 *threat to the state’s already-strained safety-net programs and also*
14 *threatens to undermine California’s fiscal stability and ongoing*
15 *economic recovery.*

16 (d) *The looming retirement security crisis exacerbates the state’s*
17 *high unemployment rate, as seniors are forced to work longer and*
18 *fewer jobs are available for younger workers trying to enter the*
19 *workforce.*

20 ~~(b)~~

21 (e) Providing California workers with a guaranteed retirement
22 income to supplement social security, traditionally funded by stable
23 employer contributions via a defined benefit, employer-based
24 pension plan, is optimal to ensure that workers accumulate the
25 benefits they need for a secure retirement. California must pursue
26 guaranteed replacement income programs, including defined benefit
27 plans, for all working Californians. Establishing and offering a
28 ~~defined benefit plan~~ *universal retirement savings plan to provide*
29 *a vital supplement to social security income* would be an important
30 step toward ensuring the retirement security for all working
31 Californians.

32 ~~(e)~~

33 (f) Though employer-sponsored guaranteed retirement income
34 programs are valuable savings tools for workers, given the
35 changing needs and work habits of California’s workers, they alone
36 are insufficient to afford workers a secure retirement. California
37 workers need additional retirement savings options to ensure their
38 retirement security.

39 ~~(d)~~

1 (g) Private individuals have limited access to attractive financial
2 products that allow them to convert their savings into secure,
3 lifelong retirement income.

4 (h) *Employers in the private sector that want to offer a*
5 *retirement savings plan for their employees often face significant*
6 *barriers in setting up their own workplace plans. In addition to*
7 *the costs of hiring service providers and paying fees,*
8 *employer-sponsored plans can be complex to maintain and*
9 *administer, and they are subject to an array of rules and*
10 *regulations, including fiduciary responsibility.*

11 (e)
12 (i) In creating an additional retirement savings program for its
13 workers, California would supplement existing savings options,
14 thus assisting California’s working men and women to save for
15 retirement. This program would be funded by the program’s
16 participants *without incurring liabilities to the state.*

17 (f)
18 (j) ~~The Golden State~~ *California Secure Choice Retirement*
19 *Savings Trust established by this act will promote expanded*
20 *retirement security for working Californians.*

21 (g)
22 (k) The implementation and effectuation of the ~~Golden State~~
23 *California Secure Choice Retirement Savings Trust* constitutes
24 the carrying out of a valid and vital public purpose.

25 SEC. 2. Section 20139 is added to the Government Code, to
26 read:

27 20139. The board shall have the power to administer funds in
28 the ~~Golden State~~ *California Secure Choice Retirement Savings*
29 *Trust pursuant to a contract with the Golden State California*
30 *Secure Choice Retirement Savings Investment Board as provided*
31 *in Title 21 (commencing with Section 100000) and to help all*
32 *California workers to plan and save for retirement.*

33 SEC. 3. Title 21 (commencing with Section 100000) is added
34 to the Government Code, to read:

35
36 TITLE 21. ~~THE GOLDEN STATE~~ *CALIFORNIA SECURE*
37 *CHOICE RETIREMENT SAVINGS TRUST ACT*

38
39 100000. For purposes of this title the following definitions
40 shall apply:

- 1 (a) “Board” means the ~~Golden State~~ *California Secure Choice*
2 *Retirement Savings Investment Board*.
- 3 (b) “*California Secure Choice Retirement Savings Plan*” or
4 “*plan*” means a retirement savings plan offered by the *California*
5 *Secure Choice Retirement Savings Trust*.
- 6 ~~(b)~~
- 7 (c) (1) “Eligible employee” means a person who is employed
8 by an eligible employer.
- 9 (2) “Eligible employee” does not include:
- 10 (A) Any employee covered under the federal *Railway Labor Act*
11 (45 U.S.C. Sec. 151), or any employee engaged in interstate
12 commerce so as not to be subject to the legislative powers of the
13 state, except in so far as application of this title is authorized under
14 the *United States Constitution* or laws of the *United States*.
- 15 (B) Any employee covered by a valid collective bargaining
16 agreement that expressly provides for an employee pension benefit
17 plan for those employees as defined in the federal *Employee*
18 *Retirement Income Security Act* (29 U.S.C. Sec. 1002).
- 19 ~~(c)~~
- 20 (d) “Eligible employer” means a person or entity engaged in a
21 business, industry, profession, trade, or other enterprise in the state,
22 whether for profit or not for profit, excluding *the federal*
23 *government*, the state, any county, any municipal corporation, or
24 any of ~~its~~ *the state’s* units or instrumentalities, that has five or more
25 employees and that satisfies the requirements to establish or
26 participate in a payroll deposit ~~pension~~ *retirement savings*
27 arrangement.
- 28 ~~(d)~~
- 29 (e) “Participating employer” means an eligible employer that
30 ~~maintains or participates in a personal pension~~ *provides a payroll*
31 *deposit retirement savings* arrangement provided for by this title
32 for eligible employees.
- 33 ~~(e)~~
- 34 (f) “Payroll deposit ~~pension~~ *retirement savings* arrangement”
35 means an arrangement by which an employer makes its payroll
36 system available to employees as a conduit for transferring salary
37 ~~reduction to remit payroll deduction~~ contributions to a defined
38 ~~benefit~~ *retirement savings* plan.
- 39 (f) “~~Personal Pension~~” means a defined benefit retirement plan
40 offered by the ~~Golden State Retirement Savings Trust~~.

1 (g) “*Stated interest rate*” means the rate of interest creditable
2 to plan accounts as determined by the board pursuant to
3 subdivision (c) of Section 100005.

4 ~~(g)~~

5 (h) “Trust” means the ~~Golden State~~ California Secure Choice
6 Retirement Savings Trust established by this title.

7 100002. (a) There is hereby created the ~~Golden State~~
8 California Secure Choice Retirement Savings Investment Board,
9 which shall consist of the Treasurer, the Director of Finance, the
10 Controller, an individual with retirement savings and investment
11 expertise appointed by the Senate Committee on Rules, a small
12 business representative and a public member each appointed by
13 the Governor, and an employee representative appointed by the
14 Speaker of the Assembly. The Treasurer shall serve as chair of the
15 board.

16 (b) The board shall annually prepare and adopt a written
17 statement of investment policy. The board shall consider the
18 statement of investment policy and any changes in the investment
19 policy at a public hearing.

20 (c) The board shall approve an investment management entity
21 or entities. Not later than 30 days after the close of each month,
22 the board shall place on file for public inspection during business
23 hours a report with respect to investments made pursuant to this
24 section and a report of deposits in financial institutions. The
25 investment manager shall report the following information to the
26 board within 20 days following the end of the each month:

27 (1) The type of investment, name of the issuer, date of maturity,
28 and the par and dollar amount invested in each security, investment,
29 and money within the program fund.

30 (2) The weighted average maturity of the investments within
31 the program fund.

32 (3) Any amounts in the program fund that are under the
33 management of private money managers.

34 (4) Any amounts in the program fund that are under the
35 management of the Board of Administration of the Public
36 Employees’ Retirement System.

37 (5) The market value as of the date of the report and the source
38 of this valuation for each security within the program fund.

39 (6) A description of compliance with the statement of investment
40 policy.

1 100004. (a) There is hereby established a retirement savings
2 trust known as the ~~Golden State California Secure Choice~~
3 Retirement Savings Trust to be administered by the board for the
4 purpose of promoting greater retirement savings for California
5 private employees in a convenient, voluntary, low-cost, and
6 portable manner. The ~~Golden State California Secure Choice~~
7 Retirement Savings Trust, as a self-sustaining trust, shall pay all
8 costs of administration out of earnings on moneys on deposit
9 therein.

10 (b) The board shall segregate moneys received by the ~~Golden~~
11 ~~State California Secure Choice~~ Retirement Savings Trust into two
12 funds, which shall be identified as the program fund and the
13 administrative fund. Notwithstanding Section 13340, moneys in
14 the trust are hereby continuously appropriated, without regard to
15 fiscal years, to the board for the purposes of this title.

16 (c) Moneys in the program fund may be invested or reinvested
17 by the Treasurer or may be invested in whole or in part under
18 contract with the Board of Administration of the Public Employees'
19 Retirement System, or private money managers, or both, as
20 determined by the board.

21 (d) Transfers may be made from the program fund to the
22 administrative fund for the purpose of paying operating costs
23 associated with administering the trust and as required by this title.
24 On an annual basis, expenditures from the administrative fund
25 shall not exceed more than 1 percent of the total program fund.
26 All costs of administration of the trust shall be paid out of the
27 ~~administration~~ administrative fund.

28 100004.5. (a) *The board shall establish a segregated account*
29 *within the program fund to be known as the Gain and Loss Reserve*
30 *Account, and the board shall have sole authority over the account.*
31 *The Gain and Loss Reserve Account shall be maintained for the*
32 *plan and may be used to credit interest at the stated interest rate*
33 *for plan years in which the board determines that the stated interest*
34 *rate cannot be met from investment earnings.*

35 (b) *The board shall establish a goal for the balance of the Gain*
36 *and Loss Reserve Account and shall periodically review the*
37 *sufficiency of the reserve account based on the recommendations*
38 *of the board's actuary.*

39 (c) *The board may allocate excess earnings of the plan with*
40 *respect to assets attributable to the plan to the Gain and Loss*

1 *Reserve Account. In addition, the board may allocate any liability*
2 *gains and losses to the Gain and Loss Reserve Account. Based on*
3 *an actuarial valuation following each plan year, the board shall*
4 *determine annually the amount, if any, that is to be allocated to*
5 *the Gain and Loss Reserve Account for that plan year. In*
6 *determining whether to allocate excess earnings to the Gain and*
7 *Loss Reserve Account, the board shall consider all of the following:*

- 8 (1) *Whether or not the plan has excess earnings.*
9 (2) *The sufficiency of the Gain and Loss Reserve Account in*
10 *light of the goal established pursuant to subdivision (b).*
11 (3) *The amount required for the plan's administrative costs.*
12 (4) *The amount required for crediting individuals' accounts at*
13 *the stated interest rate.*

14 (d) *In determining whether to allocate liability gains and losses*
15 *to the Gain and Loss Reserve Account, the board shall consider*
16 *the matters described in paragraphs (2), (3), and (4) of subdivision*
17 *(c).*

18 100005. (a) ~~The personal pension~~ *California Secure Choice*
19 *Retirement Savings Plan shall include, as determined by the board,*
20 *one or more payroll deposit cash balance pension retirement*
21 *savings plan arrangements.*

22 ~~(b) Pursuant to the authority granted under this title, the board~~
23 ~~may establish the following:~~

- 24 ~~(1) Prototype or master and prototype plans.~~
25 ~~(2) Multiple employer plans.~~
26 ~~(3) Group administrative service arrangements that allow eligible~~
27 ~~employers to achieve economies of scale with respect to their~~
28 ~~retirement savings arrangements relating to investment, accounting,~~
29 ~~payroll processing, employee communications, and investor~~
30 ~~education.~~

31 ~~(4) Custodial or trustee arrangements for payroll deposit~~
32 ~~programs or for other plans.~~

33 (b) *Individual accounts under the California Secure Choice*
34 *Retirement Savings Plan shall be nominal accounts. Individual*
35 *contributions and any employer contributions on behalf of the*
36 *individual that are specifically identified as creditable to the plan*
37 *shall be treated as credits to the individual's California Secure*
38 *Choice Retirement Savings Plan account, together with interest*
39 *credited at the stated interest rate and any additional earnings*
40 *credited thereon. The balance of the credits in an individual's*

1 *account shall determine the amount to which the individual is*
2 *entitled under the plan upon termination of coverage by the plan.*
3 *The individual shall not have the right or claim to any specific*
4 *assets of the account, program, plan, or program fund.*

5 (c) (1) *Prior to July 1 of the initial plan year, and prior to the*
6 *beginning of each plan year thereafter, the board shall adopt a*
7 *plan amendment with respect to the plan to declare the stated rate*
8 *at which interest shall be credited to plan accounts for the*
9 *following plan year.*

10 (2) *Interest shall be credited to plan accounts and shall be*
11 *computed at the stated interest rate on the balance of credits in*
12 *an individual's account and shall be compounded daily.*

13 (d) *An individual's retirement savings benefit under the plan*
14 *shall be an amount equal to the balance of the credits in the*
15 *individual's plan account on the date the retirement savings benefit*
16 *becomes payable.*

17 100006. (a) The board, in the capacity of trustee, shall have
18 the power and authority to do all of the following:

19 (1) Make and enter into contracts necessary for the
20 administration of the trust.

21 (2) Adopt a seal and change and amend it from time to time.

22 (3) Cause moneys in the program fund to be held and invested
23 and reinvested.

24 (4) Accept any grants, gifts, legislative appropriation, and other
25 moneys from the state, any unit of federal, state, or local
26 government or any other person, firm, partnership, or corporation
27 for deposit to the administrative fund or the program fund.

28 (5) Appoint a program administrator and determine the duties
29 of the program administrator and other staff as necessary and set
30 their compensation.

31 (6) Make provisions for the payment of costs of administration
32 and operation of the trust.

33 (7) Employ staff.

34 (8) Retain and contract with the Board of Administration of the
35 Public Employees' Retirement System, private financial
36 institutions, other financial and service providers, consultants,
37 actuaries, counsel, auditors, third-party administrators, and other
38 professionals as necessary.

39 (9) Procure insurance against any loss in connection with the
40 property, assets, or activities of the trust, *and secure private*

1 *underwriting to insure the retirement savings benefit that is*
2 *guaranteed to plan participants.*

3 (10) Procure insurance indemnifying each member of the board
4 from personal loss or liability resulting from a member's action
5 or inaction as a member of the board.

6 (11) Set minimum and maximum investment levels.

7 (12) Collaborate and cooperate with the Board of Administration
8 of the Public Employees' Retirement System, private financial
9 institutions, service providers, and business, financial, trade,
10 membership, and other organizations to the extent necessary or
11 desirable for the effective and efficient design, implementation,
12 and administration of the program and to maximize outreach to
13 eligible employers and eligible employees.

14 (13) Cause expenses incurred to initiate, implement, maintain,
15 and administer the program to be paid from contributions to, or
16 investment returns or assets of, the program or plans or
17 arrangements established under the program, to the extent permitted
18 under state and federal law.

19 (14) Facilitate compliance by the ~~defined-benefit~~ *retirement*
20 *savings* plans or arrangements established under the program with
21 all applicable requirements for the plans under the Internal Revenue
22 Code of 1986, including tax qualification requirements or any
23 other applicable law and accounting requirements, including
24 providing or arranging for assistance to plan sponsors and
25 individuals in complying with applicable law and tax qualification
26 requirements in a cost-effective manner.

27 (15) Carry out the duties and obligations of the ~~Golden State~~
28 *California Secure Choice* Retirement Savings Trust pursuant to
29 this title and exercise any and all other powers as may be
30 reasonably necessary for the effectuation of the purposes,
31 objectives, and provisions of this title pertaining to the trust.

32 (b) The board shall adopt regulations it deems necessary to
33 implement this title consistent with the federal Internal Revenue
34 Code and regulations issued pursuant to that code to ensure that
35 this program meets all criteria for federal tax-deferral or tax-exempt
36 benefits, or both.

37 100008. In addition to the powers and authority granted to the
38 board pursuant to Section 100006, the board shall have the power
39 and authority to do the following:

- 1 (a) Cause the ~~pension~~ *retirement savings* plans or arrangements
2 established under the program to be designed, established, and
3 operated, in a manner consistent with all of the following:
- 4 (1) In accordance with best practices for retirement savings
5 vehicles.
 - 6 (2) To maximize participation, saving, and sound investment
7 practices, and appropriate selection of default investments.
 - 8 (3) With simplicity, ease of administration for participating
9 employers, and portability of benefits.
- 10 ~~(b) Minimize costs by assisting or facilitating the pooling of~~
11 ~~small employers and individuals in purchasing retirement plans~~
12 ~~or arrangements, and investments, and through economies of scale,~~
13 ~~standardization, designation of investment types, and other~~
14 ~~measures:~~
- 15 ~~(c)~~
 - 16 (b) Arrange for collective, common, and pooled investment of
17 assets of the ~~pension~~ *retirement savings plans or arrangements*,
18 including investments in conjunction with other funds with which
19 those assets are permitted to be collectively invested, with a view
20 to saving costs through efficiencies and economies of scale.
 - 21 ~~(d)~~
 - 22 (c) Explore and establish investment options that offer
23 employees guaranteed returns on contributions and the conversion
24 of ~~pension~~ *retirement savings* account balances to secure retirement
25 income *without incurring debt or liabilities to the state*.
 - 26 ~~(e)~~
 - 27 (d) Disseminate educational information concerning saving and
28 planning for retirement.
 - 29 ~~(f)~~
 - 30 (e) Disseminate information concerning the tax credits available
31 to small business owners for establishing new retirement plans
32 and the federal saver's tax credit available to lower and
33 moderate-income households for saving in plans or arrangements.
 - 34 ~~(g)~~
 - 35 (f) Submit progress and status reports to participating employers
36 and eligible employees.
 - 37 ~~(h)~~
 - 38 (g) If necessary, determine the eligibility of an employer,
39 employee, or other individual to participate in the program.
 - 40 ~~(i)~~

1 (h) Evaluate and establish the process by which an eligible
 2 employee of an eligible employer is able to contribute a portion
 3 of his or her ~~paycheck salary or wages to a personal pension~~ *the*
 4 *plan* for automatic deposit of those contributions and ~~require~~ the
 5 participating employer *provides a payroll deposit retirement*
 6 *savings arrangement* to forward the employee contribution and
 7 related information to the program or its agents. This may include,
 8 but is not limited to, financial services companies and third-party
 9 administrators with the capability to receive and process employee
 10 information and contributions for payroll ~~deduction pension deposit~~
 11 *retirement savings* arrangements or other plans or arrangements
 12 authorized by this title.

13 ~~(j)~~

14 (i) Allow participating employers to use the program to
 15 contribute to the account on their employees' behalf or match their
 16 employees' contributions.

17 ~~(k)~~

18 (j) Evaluate and establish the process by which an individual
 19 or an employee of a nonparticipating employer may establish and
 20 make contributions to a ~~personal pension~~ *the plan*.

21 100010. (a) ~~(1)~~ After the board opens the ~~personal pension~~
 22 ~~program plan~~ for enrollment, any ~~eligible employer~~ may
 23 ~~automatically enroll eligible~~ *choose to participate and make the*
 24 *plan available to employees into an employer-sponsored retirement*
 25 *plan or the personal pension*, provide each employee with the
 26 option to opt out of that retirement plan or pension, and permit
 27 employees who choose not to opt out to use their payroll system
 28 to direct a portion of their earnings to the retirement plan or
 29 personal pension.

30 ~~(2)~~ After the board opens the ~~personal pension program~~ for
 31 enrollment, any employer with four or fewer employees that
 32 otherwise meets the definition of an eligible employer, as defined
 33 in subdivision (d) of Section 100000, may elect to automatically
 34 enroll its employees into an employer-sponsored retirement plan
 35 or the personal pension, provide each employee with the option
 36 to opt out of that retirement plan or pension, and permit employees
 37 who choose not to opt out to use their payroll system to direct a
 38 portion of their earnings to the retirement plan or personal pension.

39 (b) Beginning three months after the board opens the ~~personal~~
 40 ~~pension program plan~~ for enrollment, eligible employers with more

1 than 100 eligible employees ~~shall automatically enroll those~~
2 ~~employees into an employer-sponsored retirement plan or the~~
3 ~~personal pension, provide each employee with the option to opt~~
4 ~~out of that retirement plan or pension, and permit employees who~~
5 ~~choose not to opt out to use their payroll system to direct a portion~~
6 ~~of their earnings to the retirement plan or personal pension. that~~
7 ~~do not offer an employer-sponsored retirement plan shall make~~
8 ~~the plan available to eligible employees, and all eligible employees~~
9 ~~shall be enrolled in the plan, unless the employee elects not to~~
10 ~~participate in the plan as provided in subdivision (e).~~

11 (c) Beginning six months after the board opens the ~~personal~~
12 ~~pension program~~ *plan* for enrollment, eligible employers with more
13 than 50 eligible employees ~~shall automatically enroll those~~
14 ~~employees into an employer-sponsored retirement plan or the~~
15 ~~personal pension, provide each employee with the option to opt~~
16 ~~out of that retirement plan or pension, and permit employees who~~
17 ~~choose not to opt out to use their payroll system to direct a portion~~
18 ~~of their earnings to the retirement plan or personal pension. that~~
19 ~~do not offer an employer-sponsored retirement plan shall make~~
20 ~~the plan available to eligible employees, and all eligible employees~~
21 ~~shall be enrolled in the plan, unless the employee elects not to~~
22 ~~participate in the plan as provided in subdivision (e).~~

23 (d) Beginning nine months after the board opens the ~~personal~~
24 ~~pension program~~ *plan* for enrollment, all other eligible employers
25 ~~shall automatically enroll their eligible employees into an~~
26 ~~employer-sponsored retirement plan or the personal pension,~~
27 ~~provide those employees with the option to opt out of that~~
28 ~~retirement plan or pension, and permit employees who choose not~~
29 ~~to opt out to use their payroll system to direct a portion of their~~
30 ~~earnings to the retirement plan or personal pension. that do not~~
31 ~~offer an employer-sponsored retirement plan shall make the plan~~
32 ~~available to eligible employees, and all eligible employees shall~~
33 ~~be enrolled in the plan, unless the employee elects not to participate~~
34 ~~in the plan as provided in subdivision (e).~~

35 (e) *An eligible employee may elect to opt out of the plan by*
36 *making a notation on the exemption certificate produced by the*
37 *Employment Development Department. If the employee elects to*
38 *opt out, the employee shall, after 24 months, be enrolled in the*
39 *plan, unless the employee again elects to opt out as provided in*
40 *this subdivision.*

1 (e)

2 (f) Employers shall retain the option at all times to set up any
3 ~~sort~~ *type* of retirement plan, such as a defined benefit plan or a
4 401(k) plan, instead of ~~the personal pension~~ *making the plan*
5 *available to its eligible employees.*

6 ~~(f) An eligible employee shall be enrolled in either an~~
7 ~~employer-sponsored retirement savings plan or the personal~~
8 ~~pension pursuant to this section unless that employee elects to not~~
9 ~~participate in that retirement plan or pension. The employee may~~
10 ~~elect to opt out of his or her retirement savings option by making~~
11 ~~a notation on the California Employee's Withholding Allowance~~
12 ~~Certificate form produced by the Employment Development~~
13 ~~Department. If the employee opts out, the employee shall, after~~
14 ~~24 months, be automatically enrolled in either an~~
15 ~~employer-sponsored retirement savings plan or the personal~~
16 ~~pension pursuant to this section unless that employee again elects~~
17 ~~to not participate in that retirement plan or pension.~~

18 (g) An eligible employee may also terminate his or her
19 participation in the ~~personal pension~~ *plan* at any time in a manner
20 prescribed by the board and thereafter by making a notation on
21 the ~~California Employee's Withholding Allowance Certificate~~
22 ~~form~~ *exemption certificate* produced by the Employment
23 Development Department.

24 (h) Unless otherwise specified by the employee, *a participating*
25 *employee shall contribute* 3 percent of the employee's annual
26 salary ~~shall be the default amount contributed~~ *or wages* to the
27 ~~personal pension~~ *plan.*

28 (i) By regulation, the board may adjust the ~~default~~ *contribution*
29 amount set in subdivision (h) to no less than 2 percent and no more
30 than 4 percent and may vary that ~~default~~ amount within that 2
31 percent to 4 percent range for participating employees according
32 to the length of time the employee has contributed to the ~~personal~~
33 ~~pension~~ *plan.*

34 ~~100012. (a) The Employment Development Department shall~~
35 ~~assess an eligible employer that fails to offer all of its eligible~~
36 ~~employees an employer-sponsored retirement plan or the personal~~
37 ~~pension pursuant to Section 10010 a penalty of one thousand~~
38 ~~dollars (\$1,000) for every eligible employee not offered the~~
39 ~~retirement option.~~

1 ~~(b) That penalty shall not be assessed if, within 90 days of being~~
2 ~~notified of violation of this section, the eligible employer remedies~~
3 ~~the failure by offering all of its eligible employees either an~~
4 ~~employer-sponsored retirement plan or the personal pension.~~

5 ~~(e) All penalties collected by the Employment Development~~
6 ~~Department under this section shall be deposited in the State~~
7 ~~Treasury and credited to the General Fund.~~

8 100014. ~~(a) The Employment Development Department shall~~
9 ~~modify the California Employee's Withholding Allowance~~
10 ~~Certificate (Form DE 4) to create an option for an employee to~~
11 ~~note his or her decision to opt out of utilizing either the~~
12 ~~employer-sponsored retirement savings plan or the personal~~
13 ~~pension.~~

14 ~~(b) In modifying the California Employee's Withholding~~
15 ~~Allowance Certificate to add the employee retirement savings~~
16 ~~opt-out provision pursuant to subdivision (a), the Employment~~
17 ~~Development Department shall make the opt-out notation simple~~
18 ~~and concise and in a manner it deems necessary to appropriately~~
19 ~~evidence the employee's understanding that he or she is choosing~~
20 ~~not to automatically deduct earnings to save for retirement.~~

21 100016. ~~Participating employers shall not be liable for the~~
22 ~~investment decisions of employees whose assets are deposited in~~
23 ~~the personal pension plan.~~

24 100018. (a) Notwithstanding Section 10231.5, the board shall
25 submit an annual audited financial report, prepared in accordance
26 with generally accepted accounting principles, on the operations
27 of the ~~Golden State~~ *California Secure Choice* Retirement Savings
28 Trust by August 1 to the Governor, the Controller, the State
29 Auditor, and the Legislature, *pursuant to Section 9795*. The annual
30 audit shall be made by an independent certified public accountant
31 and shall include, but not be limited to, direct and indirect costs
32 attributable to the use of outside consultants, independent
33 contractors, and any other persons who are not state employees.

34 (b) The annual audit shall be supplemented by the following
35 information prepared by the board:

- 36 (1) Any studies or evaluations prepared in the preceding year.
- 37 (2) A summary of the benefits provided by the trust including
- 38 the number of participants in the trust.

1 (3) Any other information that is relevant in order to make a
2 full, fair, and effective disclosure of the operations of the ~~Golden~~
3 ~~State California Secure Choice Retirement Savings Trust.~~

4 100022. The board shall initially conduct a market analysis to
5 determine whether the necessary conditions for implementation
6 of this title can be met, including, but not limited to, likely
7 participation rates, participants' comfort with various investment
8 vehicles and degree of risk, contribution levels, and the rate of
9 account closures and rollovers. The board shall conduct this
10 analysis only if sufficient funds are made available through a
11 nonprofit or private entity, federal funding, or an annual Budget
12 Act appropriation. The board shall forward its findings to the Chair
13 of the Senate *Committee on Public Employment and Retirement*
14 ~~Committee~~ and to the Chair of the Assembly *Committee on Public*
15 *Employees, Retirement and Social Security* ~~Committee~~, pursuant
16 to Section 9795.

17 100024. With the exceptions of subdivision (a) of Section
18 100002, and Sections 100022 and 100026, the provisions of this
19 title shall become operative only if funds are made available
20 through a nonprofit or private entity or federal funding, in amounts
21 sufficient to allow the board to study, develop, and obtain the
22 approvals necessary to implement this title and the board notifies
23 the Director of Finance that, based on its market analysis, the
24 provisions of this title can be self-sustaining pursuant to this title.

25 100026. This title shall be construed liberally in order to
26 effectuate its legislative intent. The purposes of this title and all
27 of its provisions with respect to the powers granted shall be broadly
28 interpreted to effectuate that intent and purposes and not as to any
29 limitation of powers.

30 *SEC. 4. Section 1088.9 is added to the Unemployment*
31 *Insurance Code, to read:*

32 *1088.9. (a) The department shall have the power and duties*
33 *necessary to administer the enforcement of employer compliance*
34 *with Title 21 (commencing with Section 100000) of the Government*
35 *Code.*

36 *(b) An eligible employer shall use the department's exemption*
37 *certificate filed by the eligible employee with the employer in a*
38 *form and containing that information as the department prescribes,*
39 *to create an option for an eligible employee to note his or her*
40 *decision to opt out of utilizing the California Secure Choice*

1 *Retirement Savings Plan. The department shall make the opt-out*
2 *notation simple and concise and in a manner it deems necessary*
3 *to appropriately evidence the employee's understanding that he*
4 *or she is choosing not to automatically deduct earnings to save*
5 *for retirement.*

6 *(c) For each eligible employer who, without good cause, fails*
7 *to make the California Secure Choice Retirement Savings Plan*
8 *available to all of its eligible employees pursuant to Section 100010*
9 *of the Government Code, on or before 90 days after notice has*
10 *been given to the employer of his or her failure to comply, the*
11 *department shall assess a penalty of one thousand dollars (\$1,000)*
12 *for every eligible employee not offered the retirement savings plan.*
13 *The department shall enforce this penalty as part of its existing*
14 *investigation and audit function.*

15 *(d) This section shall become operative on January 1, 2014.*